

PART 22 — APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

22.202 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts above the micro-purchase threshold, when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—</p> <p>(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;</p> <p>(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or</p> <p>(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.</p>	<p>The contracting officer shall insert the clause at 52.222-3, Convict Labor, in solicitations and contracts when the contract is to be performed in any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands; unless—</p> <p>(a) The contract will be subject to the Walsh-Healey Public Contracts Act (see Subpart 22.6), which contains a separate prohibition against the employment of convict labor;</p> <p>(b) The supplies or services are to be purchased from Federal Prison Industries, Inc. (see Subpart 8.6); or</p> <p>(c) The acquisition involves the purchase, from any State prison, of finished supplies that may be secured in the open market or from existing stocks, as distinguished from supplies requiring special fabrication.</p>

22.305 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:</p> <p>(a) Contracts at or below the simplified acquisition threshold.</p> <p>(b) Contracts for supplies, materials, or articles ordi-</p>	<p>The contracting officer shall insert the clause at 52.222-4, Contract Work Hours and Safety Standards Act—Overtime Compensation, in solicitations and contracts (including, for this purpose, basic ordering and blanket purchase agreements) when the contract may require or involve the employment of laborers or mechanics. However, the contracting officer shall not include the clause in solicitations and contracts if it is contemplated that the contract will be in one of the following categories:</p> <p>(a) Construction contracts of \$2,000 or less.</p> <p>(b) Contracts, other than construction contracts, of \$2,500 or less. Indefinite quantity or requirements contracts, including basic ordering agreements and blanket purchase agreements are exempt, if it can be determined in advance that the aggregate amount of all orders estimated to be placed thereunder for 1 year after the effective date of the agreement will not exceed \$2,500. A determination shall be made annually thereafter if the contract or agreement is ex-</p>

<p>narily available in the open market.</p> <p>(c) Contracts for transportation by land, air, or water, or for the transmission of intelligence.</p> <p>(d) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.</p> <p>(e) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).</p> <p>(f) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.</p> <p>(g) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).</p>	<p>tended and the contract or agreement modified if necessary.</p> <p>(e) Contracts for supplies, materials, or articles ordinarily available in the open market.</p> <p>(d) Contracts for transportation by land, air, or water, or for the transmission of intelligence.</p> <p>(e) Contracts to be performed solely within a foreign country or within a territory under United States jurisdiction other than a State, the District of Columbia, Puerto Rico, the Virgin Islands, Outer Continental Shelf Lands as defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331), American Samoa, Guam, Wake Island, and Johnston Island.</p> <p>(f) Contracts requiring work to be done solely in accordance with the Walsh-Healey Public Contracts Act (see Subpart 22.6).</p> <p>(g) Contracts (or portions of contracts) for supplies in connection with which any required services are merely incidental to the contract and do not require substantial employment of laborers or mechanics.</p> <p>(h) Any other contracts exempt under regulations of the Secretary of Labor (29 CFR 5.15).</p>
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22.1006 Contract clauses.	22.1006 Clauses for contracts over \$2,500.
<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.</p> <p>(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See 22.1016.)</p> <p>(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simpli-</p>	<p>(a) The contracting officer shall insert the clause at 52.222-41, Service Contract Act of 1965, as amended, in solicitations and contracts if the contract is subject to the Act and is (1) for over \$2,500 or (2) for an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.</p> <p>(b) The contracting officer shall insert the clause at 52.222-42, Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Act is applicable. (See 22.1016.)</p> <p>(c)(1) The contracting officer shall insert the clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, and is a multiple year contract or is a contract with options to renew which exceeds the small purchase limitation. The clause may be used in contracts that do not exceed the small purchase limitation. The</p>

fied acquisition threshold. The clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor’s collective bargaining agreement in effect during this contract’s preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor’s increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c)(1), (2) and (3)), or 52.222-44 (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$4.00 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the **simplified acquisition threshold**, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the **simplified acquisition threshold**. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

- (1) The clause at 52.222-41 applies;
- (2) The contract resulting from the solicitation succeeds a contract for substantially the same services

clause at 52.222-43, Fair Labor Standards Act and Service Contract Act—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor’s collective bargaining agreement in effect during this contract’s preceding contract period (see 22.1002-2 and 22.1002-3). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor’s increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at 52.222-43 (subparagraphs (c)(1), (2) and (3)), or 52.222-44 (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$4.00 per hour.)

(2) The contracting officer shall insert the clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price service contract containing the clause at 52.222-41, Service Contract Act of 1965, as amended, exceeds the ~~small purchase limitation~~, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the ~~small purchase limitation~~. The clause at 52.222-44, Fair Labor Standards Act and Service Contract Act—Price Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see 22.1002-2 and 22.1002-3).

(3) The clauses prescribed in paragraph 22.1006(c)(1) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in 16.203-4(d) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph 22.1006(c).

(d) The contracting officer shall insert the clause at 52.222-47, Service Contract Act (SCA) Minimum Wages and Fringe Benefits, if—

- (1) The clause at 52.222-41 applies;
- (2) The contract resulting from the solicitation succeeds a contract for substantially the same services

<p>to be performed in the same locality;</p> <p>(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and</p> <p>(4) All applicable Department of Labor wage determinations have been requested but not received.</p> <p>(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of ADP, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).</p> <p>(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds \$2,500.</p> <p>(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.</p>	<p>to be performed in the same locality;</p> <p>(3) The incumbent contractor has negotiated or is negotiating a collective bargaining agreement with some or all of its service employees; and</p> <p>(4) All applicable Department of Labor wage determinations have been requested but not received.</p> <p>(e)(1) The contracting officer shall insert the clause at 52.222-48, Exemption from Application of Service Contract Act Provisions, in any solicitation and resulting contract calling for the maintenance, calibration, and/or repair of ADP, scientific and medical, and office and business equipment if the contracting officer determines that the resultant contract may be exempt from Service Contract Act coverage as described at 22.1003-4(b)(4).</p> <p>(2) If the successful offeror does not certify that the exemption applies, the contracting officer shall not insert the clause at 52.222-48 and instead shall insert in the contract (i) the applicable Service Contract Act clause(s) and (ii) the appropriate Department of Labor wage determination if the contract exceeds \$2,500.</p> <p>(f) The contracting officer shall insert the clause at 52.222-49, Service Contract Act—Place of Performance Unknown, if using the procedures prescribed in 22.1009-4.</p>
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PART 23 — ENVIRONMENT CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.101 Applicability.

<i>Interim</i>	<i>Prior</i>
This subpart does not apply to contracts below the simplified acquisition threshold or to the use of facilities outside the United States. (“United States,” as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)	This subpart does not apply to small purchases or to the use of facilities outside the United States. (“United States,” as used in this subpart, includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.)

23.501 Applicability.

<i>Interim</i>	<i>Prior</i>
This subpart applies to all contracts including contracts	This subpart applies to all contracts including con-

<p>with 8(a) contractors under FAR Subpart 19.8 and modifications which require a justification and approval (see Subpart 6.3) except—</p> <p>(a) Contracts at or below the simplified acquisition threshold; however, the requirements of this subpart shall apply to contracts of any value if the contract is awarded to an individual;</p> <p>(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;</p> <p>(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or</p> <p>(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>	<p>tracts with 8(a) contractors under FAR Subpart 19.8 and modifications which require a justification and approval (see Subpart 6.3) except—</p> <p>(a) Contracts valued below \$25,000; however, the requirements of this subpart shall apply to contracts of any dollar value if the contract is awarded to an individual;</p> <p>(b) Contracts or those parts of contracts that are to be performed outside of the United States, its territories, and its possessions;</p> <p>(c) Contracts by law enforcement agencies, if the head of the law enforcement agency or designee involved determines that application of this subpart would be inappropriate in connection with the law enforcement agency's undercover operations; or</p> <p>(d) Where application would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>
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23.504 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1) for a contract that exceeds the simplified acquisition threshold, unless it has certified, pursuant to 52.223-5, Certification Regarding a Drug-Free Workplace, that it will provide a drug-free workplace by—</p> <p>(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;</p> <p>(2) Establishing an ongoing drug-free awareness program to inform its employees about—</p> <p>(i) The dangers of drug abuse in the workplace;</p> <p>(ii) The contractor's policy of maintaining a drug-free workplace;</p> <p>(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and</p> <p>(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;</p> <p>(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;</p> <p>(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this sec-</p>	<p>(a) No offeror other than an individual shall be considered a responsible source (see 9.104-1(g)) for a contract that equals or exceeds \$25,000, unless it has certified, pursuant to 52.223-5, Certification Regarding A Drug-Free Workplace, that it will provide a drug-free workplace by—</p> <p>(1) Publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;</p> <p>(2) Establishing an ongoing drug-free awareness program to inform its employees about—</p> <p>(i) The dangers of drug abuse in the workplace;</p> <p>(ii) The contractor's policy of maintaining a drug-free workplace;</p> <p>(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and</p> <p>(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;</p> <p>(3) Providing all employees engaged in performance of this contract with a copy of the statement required by subparagraph (a)(1) of this section;</p> <p>(4) Notifying all employees in writing in the statement required by subparagraph (a)(1) of this sec-</p>

tion, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within calendar 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual certifies, pursuant to the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104-1(g) and 19.602-1(a)(2)(i).)

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as pos-

tion, that as a condition of employment on a covered contract, the employee will—

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 calendar days after such conviction;

(5) Notifying the contracting officer in writing within 10 calendar days after receiving notice under subdivision (a)(4)(ii) of this section, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within calendar 30 days after receiving notice under subparagraph (a)(4) of this section of a conviction, taking one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.

(7) Making a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (a)(1) through (a)(6) of this section.

(b) No individual shall be awarded a contract of any dollar value unless that individual certifies, pursuant to the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, that the individual will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of the contract.

(c) Failure of the offeror to provide the certification required by paragraph (a) or (b) of this section renders an offeror unqualified and ineligible for award. (See 9.104-1(g) and 19.602-1(a)(2)(i).)

(d) For a contract of 30 days or more performance duration, the contractor shall comply with the provisions of paragraph (a) of this section within 30 calendar days after contract award, unless the contracting officer agrees in writing that circumstances warrant a longer period of time to comply. Before granting such an extension, the contracting officer shall consider such factors as the number of contractor employees at the worksite, whether the contractor has or must develop a drug-free workplace program, and the number of contractor worksites. For contracts of less than 30 days performance duration, the contractor shall comply with the provisions of paragraph (a) of this section as soon as possible, but in any case, by a date prior to when performance

sible, but in any case, by a date prior to when performance is expected to be completed.	is expected to be completed.
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23.505 Solicitation provision and contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—</p> <p>(1) Of any dollar value if the contract is expected to be awarded to an individual; or</p> <p>(2) Expected to exceed the simplified acquisition threshold if the contract is expected to be awarded to other than an individual; or</p> <p>(b) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.</p> <p>(c) Contracting officers shall not insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—</p> <p>(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;</p> <p>(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate inconnection with the law enforcement agency's undercover operations; or</p> <p>(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>	<p>(a) Contracting officers shall insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, except as provided in paragraph (c) of this section, in solicitations—</p> <p>(1) Of any dollar value if the contract is expected to be awarded to an individual; or</p> <p>(2) Expected to equal or exceed \$25,000, if the contract is expected to be awarded to other than an individual.</p> <p>(b) Contracting officers shall insert the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts described in paragraph (a) of this section unless the conditions of paragraph (c) of this section apply.</p> <p>(c) Contracting officers shall not insert the provision at 52.223-5, Certification Regarding A Drug-Free Workplace, or the clause at 52.223-6, Drug-Free Workplace, in solicitations and contracts, if—</p> <p>(1) The resultant contract is to be performed entirely outside of the United States, its territories, and its possessions;</p> <p>(2) The resultant contract is for law enforcement agencies, and the head of the law enforcement agency or designee involved determines that application of the requirements of this subpart would be inappropriate inconnection with the law enforcement agency's undercover operations; or</p> <p>(3) Inclusion of these requirements would be inconsistent with the international obligations of the United States or with the laws and regulations of a foreign country.</p>

PART 25 — FOREIGN ACQUISITION

25.302 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.</p> <p>(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:</p> <ol style="list-style-type: none"> (1) The estimated cost of the product or service is at or below the simplified acquisition threshold in Part 13. (2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption. (3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108). (4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist. (5) Subsistence items are required specifically for resale in overseas commissary stores. (6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments. (7) Petroleum supplies and their by-products as listed and defined in 25.108 are required. (8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304). (9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama. <p>(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by</p>	<p>(a) The Balance of Payments Program is an interim measure imposed to alleviate the impact of Government expenditures on the Nation's balance of international payments. The Balance of Payments Program differs from the Buy American Act in that the Buy American Act applies only to acquisitions for use inside the United States, while the Balance of Payments Program applies to acquisitions for use outside the United States.</p> <p>(b) Foreign end products or services may be acquired for use outside the United States if any of the following conditions are met:</p> <ol style="list-style-type: none"> (1) The estimated cost of the product or service does not exceed the appropriate small purchase limitation in Part 13. (2) Perishable subsistence items are required and the agency head, or a designee, determines that delivery from the United States would significantly impair their quality at the point of consumption. (3) The agency head, or a designee, determines that a requirement can only be filled by a foreign end product or service, and that it is not feasible to forgo filling it or to provide a domestic substitute (see 25.108). (4) The acquisition is for ice, books, utilities, communications, and other materials or services that, by their nature or as a practical matter, can only be acquired or performed in the country concerned and a U.S. Government capability does not exist. (5) Subsistence items are required specifically for resale in overseas commissary stores. (6) The acquisition of foreign end products or services is required by a treaty or executive agreement between governments. (7) Petroleum supplies and their by-products as listed and defined in 25.108 are required. (8) The end products or services are paid for with excess or near-excess foreign currencies (see 25.304). (9) The end products or services are mined, produced, or manufactured in Panama and are required by and of the use of United States Forces in Panama. <p>(c) Contracts shall require use of domestic construction materials (see 25.201) for construction, repair, or maintenance of real property outside the United States, except when the cost of these materials (including transportation and handling costs) exceeds the cost of foreign construction materials by more than 50 percent. A differen-</p>

more than 50 percent. A differential greater than 50 percent may be used when specifically authorized by the agency head or a designee.	tial greater than 50 percent may be used when specifically authorized by the agency head or a designee.
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25.703 Exceptions.

<i>Interim</i>	<i>Prior</i>
In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for acquisitions at or below the simplified acquisition threshold unless otherwise provided by agency procedures. In the case of contracts in excess of the simplified acquisition threshold, the approval level is the agency head. A copy of the written approval shall be furnished to the contractor.	In unusual situations, supplies and services restricted by 25.702(a) may be acquired for use outside the United States, its possessions, or Puerto Rico. Examples of an unusual situation are an emergency or when the supplies or services are not available from another source and a substitute is not acceptable. The approval level for this exception is the contracting officer for small purchases , unless otherwise provided by the agency in the case, or the agency head for other than small purchases. A copy of the written approval shall be furnished to the contractor.

PART 27—PATENTS, DATA, AND COPYRIGHTS

27.201-2 Clauses on authorization and consent.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52-227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when using simplified acquisition procedures or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when simplified acquisition procedures are used, it may be used with them.</p> <p>(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclusively for experimental work), unless both complete</p>	<p>(a) The contracting officer shall insert the clause at 52.227-1, Authorization and Consent, in solicitations and contracts (including those for construction; architect-engineer services; dismantling, demolition, or removal of improvements; and noncommon carrier communication services), except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. Although the clause is not required when small purchase procedures apply, it may be used with them.</p> <p>(b) The contracting officer shall insert the clause with its Alternate I in all R&D solicitations and contracts (including those for construction and architect-engineer services calling exclusively for R&D work or exclu-</p>

<p>performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.</p> <p>(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.</p>	<p>sively for experimental work), unless both complete performance and delivery are outside the United States, its possessions, and Puerto Rico. When a proposed contract involves both R&D work and supplies or services, and the R&D work is the primary purpose of the contract, the contracting officer shall use this alternate. In all other proposed contracts involving both R&D work and supplies or services, the contracting officer shall use the basic clause. Also, when a proposed contract involves either R&D or supplies and materials, in addition to construction or architect-engineer work, the contracting officer shall use the basic clause.</p> <p>(c) If the solicitation or contract is for communication services with a common carrier and the services are unregulated and not priced by a tariff schedule set by a regulatory body, the contracting officer shall use the clause with its Alternate II.</p>
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27.202-2 Clause on notice and assistance.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the simplified acquisition threshold, except when complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p>	<p>The contracting officer shall insert the clause at 52.227-2, Notice and Assistance Regarding Patent and Copyright Infringement, in supply, service, or research and development solicitations and contracts (including construction and architect-engineer contracts) which anticipate a contract value above the dollar limit set forth at 13.000, except when small purchase procedures apply or both complete performance and delivery are outside the United States, its possessions, and Puerto Rico, unless the contracts indicate that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p>

27.203-1 General.

<i>Interim</i>	<i>Prior</i>
<p>(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.</p> <p>(b) A patent indemnity clause shall not be used in the</p>	<p>(a) To the extent set forth in this section, the Government requires reimbursement for liability for patent infringement arising out of or resulting from performing construction contracts or contracts for supplies or services that normally are or have been sold or offered for sale by any supplier to the public in the commercial open market or that are the same as such supplies or services with relatively minor modifications. Appropriate clauses for indemnification of the Government are prescribed in the following subsections.</p> <p>(b) A patent indemnity clause shall not be used in the</p>

<p>following situations:</p> <p>(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.</p> <p>(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) sealed bid contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.</p> <p>(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped into one of those areas.</p> <p>(4) When the contract is awarded using simplified acquisition procedures.</p> <p>(5) When the contract is solely for architect-engineer work (see Part 36).</p>	<p>following situations:</p> <p>(1) When the clause at 52.227-1, Authorization and Consent, with its Alternate I, is included in the contract, except that in contracts calling also for supplies of the kind described in paragraph (a) above, a patent indemnity clause may be used solely with respect to such supplies.</p> <p>(2) When the contract is for supplies or services (or such items with relatively minor modifications) that clearly are not or have not been sold or offered for sale by any supplier to the public in the commercial open market. However, a patent indemnity clause may be included in (i) sealed bid contracts to obtain an indemnity regarding specific components, spare parts, or services so sold or offered for sale (see 27.203-2(b) below), and (ii) contracts to be awarded (either by sealed bidding or negotiation) if a patent owner contends that the acquisition would result in patent infringement and the prospective contractor, after responding to a solicitation that did not contain an indemnity clause, is willing to indemnify the Government against such infringement either (A) without increase in price on the basis that the patent is invalid or not infringed, or (B) for other good reasons.</p> <p>(3) When both performance and delivery are to be outside the United States, its possessions, and Puerto Rico, unless the contract indicates that the supplies or other deliverables are ultimately to be shipped in to one of those areas.</p> <p>(4) When the contract is awarded by small purchase procedures.</p> <p>(5) When the contract is solely for architect-engineer work (see Part 36).</p>
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PART 28—BONDS AND INSURANCE

28.103-2 Performance bonds.

<i>Interim</i>	<i>Prior</i>
<p>(a) Performance bonds may be required for contracts exceeding the simplified acquisition threshold when necessary to protect the Government's interest. The following situations may warrant a performance bond:</p> <p>(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged mate-</p>	<p>(a) Performance bonds may be required when necessary to protect the Government's interest. The following situations may warrant a performance bond:</p> <p>(1) Government property or funds are to be provided to the contractor for use in performing the contract or as partial compensation (as in retention of salvaged mate-</p>

<p>rial).</p> <p>(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.</p> <p>(3) Substantial progress payments are made before delivery of end items starts.</p> <p>(4) Contracts are for dismantling, demolition, or removal of improvements.</p> <p>(b) When a performance bond is required, the solicitation shall contain the information in 28.102-3.</p> <p>(c) The Government may require additional performance bond protection when a contract price is increased.</p> <p>(d) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.</p>	<p>rial).</p> <p>(2) A contractor sells assets to or merges with another concern, and the Government, after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.</p> <p>(3) Substantial progress payments are made before delivery of end items starts.</p> <p>(4) Contracts are for dismantling, demolition, or removal of improvements.</p> <p>(b) When a performance bond is required, the solicitation shall contain the information in 28.102-3.</p> <p>(c) The Government may require additional performance bond protection when a contract price is increased.</p> <p>(d) The contracting officer must determine the contractor's responsibility (see Subpart 9.1) even though a bond has been or can be obtained.</p>
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28.310 Contract clause for work on a Government installation.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold in Part 13, and the contract will require work on a Government installation, unless—</p> <p>(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or</p> <p>(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.</p> <p>(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in (a)(1) and (2) above if it is in the Government's interest to do so.</p>	<p>(a) The contracting officer shall insert the clause at 52.228-5, Insurance—Work on a Government Installation, in solicitations and contracts when a fixed-price contract is contemplated, the contract amount is expected to be over the appropriate small purchase limitation in Part 13, and the contract will require work on a Government installation, unless—</p> <p>(1) Only a small amount of work is required on the Government installation (e.g., a few brief visits per month); or</p> <p>(2) All work on the Government installation is to be performed outside the United States, its possessions, and Puerto Rico.</p> <p>(b) The contracting officer may insert the clause at 52.228-5 in solicitations and contracts described in (a)(1) and (2) above if it is in the Government's interest to do so.</p>

PART 29—TAXES

29.401-3 Competitive contracts.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico, when a fixed-price contract is contemplated and the contract is expected to exceed the simplified acquisition threshold in 13,000, unless the clause at 52.229-4, Federal State, and Local Taxes (Noncompetitive Contract), is included in the contract.	The contracting officer shall insert the clause at 52.229-3, Federal, State, and Local Taxes, in solicitations and contracts if the contract is to be performed wholly or partly within the United States, its possessions, or Puerto Rico when a fixed-price contract is contemplated , and the contract is expected to exceed the small purchase limitation in 13,000, unless the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), is included in the contract.

29.401-4 [Amended]

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive contracts when the contract exceeds the simplified acquisition threshold in 13,000 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied that the contract price does not include contingencies for State and local taxes, and that, unless the clause is used, the contract price will include such contingencies.	The contracting officer shall insert the clause at 52.229-4, Federal, State, and Local Taxes (Noncompetitive Contract), in fixed-price noncompetitive contracts when the contract exceeds the small purchase limitation in 13,000 to be performed wholly or partly within the United States, its possessions, or Puerto Rico when satisfied that the contract price does not include contingencies for State and local taxes, and that, unless the clause is used, the contract price will include such contingencies.

PART 32—CONTRACT FINANCING

32.617 Contract clause. [52.232-17 interest]

<i>Interim</i>	<i>Prior</i>
(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories: (1) Contracts at or below the simplified acquisition threshold. (2) Contracts with Government agencies. (3) Contracts with a State or local government or instrumentality. (4) Contracts with a foreign government or instrumentality.	(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories: (1) Small purchases. (2) Contracts with Government agencies. (3) Contracts with a State or local government or instrumentality. (4) Contracts with a foreign government or instrumentality.

<p>(5) Contracts without any provision for profit or fee with a nonprofit organization.</p> <p>(6) Contracts described in Subpart 5.5, Paid Advertisements.</p> <p>(7) Any other exceptions authorized under agency procedures.</p> <p>(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).</p>	<p>(5) Contracts without any provision for profit or fee with a nonprofit organization.</p> <p>(6) Contracts described in Subpart 5.5, Paid Advertisements.</p> <p>(7) Any other exceptions authorized under agency procedures.</p> <p>(b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).</p>
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32.901 Applicability.

<i>Interim</i>	<i>Prior</i>
<p>This subpart applies to all Government contracts (including contracts at or below the simplified acquisition threshold as defined in Subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).</p>	<p>This subpart applies to all Government contracts (including small-purchases as defined in Subpart 13.1), except contracts with payment terms and late payment penalties established by other governmental authority (e.g., tariffs).</p>

32.908 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.</p> <p>(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).</p> <p>(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including contracts at or below the simplified acquisition threshold in Part 13), except as indicated in 32.901.</p> <p>(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.</p>	<p>(a) If the solicitation or contract contains the clause at 52.232-10, Payments Under Fixed-Price Architect-Engineer Contracts, the contracting officer shall insert the clause at 52.232-26, Prompt Payment for Fixed-Price Architect-Engineer Contracts.</p> <p>(b) The contracting officer shall insert the clause at 52.232-27, Prompt Payment for Construction Contracts, in all solicitations and contracts for construction (see Part 36).</p> <p>(c) The contracting officer shall insert the clause at 52.232-25, Prompt Payment, in all other solicitations and contracts (including small-purchases as defined in Subpart 13.1); except as indicated in 32.901.</p> <p>(d) If payment may be made by electronic funds transfer, the contracting officer shall insert the clause at 52.232-28, Electronic Funds Transfer Payment Methods, in solicitations and contracts.</p>

33.106[Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than simplified acquisition threshold.</p> <p>(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its <i>Alternate I</i>.</p>	<p>(a) The contracting officer shall insert the provision at 52.233-2, Service of Protest, in solicitations for other than small purchases.</p> <p>(b) The contracting officer shall insert the clause at 52.233-3, Protest After Award, in all solicitations and contracts. If a cost reimbursement contract is contemplated, the contracting officer shall use the clause with its <i>Alternate I</i>.</p>

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.502 Differing site conditions.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.</p>	<p>The contracting officer shall insert the clause at 52.236-2, Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</p>

36.503 Site investigation and conditions affecting the work.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.</p>	<p>The contracting officer shall insert the clause at 52.236-3, Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.</p>

36.506 Superintendence by the contractor.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold .	The contracting officer shall insert the clause at 52.236-6, Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation .

36.508 Other contracts.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold .	The contracting officer shall insert the clause at 52.236-8, Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation .

36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated	The contracting officer shall insert the clause at 52.236-9, Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation . The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and

and the contract amount is expected to be at or below the simplified acquisition threshold.	the contract amount is expected to be within the small purchase limitation.
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36.510 Operations and Storage Areas.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.	The contracting officer shall insert the clause at 52.236-10, Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.511 Use and possession prior to completion.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified acquisition threshold. This clause may be inserted in solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold.	The contracting officer shall insert the clause at 52.236-11, Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the small purchase limitations. This clause may be inserted in solicitations and contracts when the contract amount is expected to be within the small purchase limitations.

36.512 Cleaning up.

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.	The contracting officer shall insert the clause at 52.236-12, Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation.

36.513 Accident prevention.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.</p> <p>(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.</p> <p>(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.</p>	<p>(a) The contracting officer shall insert the clause at 52.236-13, Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.</p> <p>(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see FAR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.</p> <p>(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.</p>

36.515 Schedules for construction contracts.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.</p>	<p>The contracting officer may insert the clause at 52.236-15, Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the small purchase limitation, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with clauses covering other management approaches for ensuring that a contractor makes adequate progress.</p>

36.521 Specifications and drawings for construction.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. When the Government needs record drawings, the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with its Alternate II, if reproducible shop drawings are not needed.</p>	<p>The contracting officer shall insert the clause at 52.236-21, Specifications and Drawings for Construction, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be within the small purchase limitation. When the Government needs record drawings, the contracting officer shall (a) use the clause with its Alternate I, if reproducible shop drawings are needed, or (b) use the clause with its Alternate II, if reproducible shop drawings are not needed.</p>

36.602-5 Short selection processes for contracts not to exceed the simplified acquisition threshold.	36.602-5 Short selection processes for contracts not to exceed the small purchase limitation.
<i>Interim</i>	<i>Prior</i>
<p>When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the simplified acquisition threshold. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.</p> <p>(a) <i>Selection by the board.</i> The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.</p> <p>(b) <i>Selection by the chairperson of the board.</i> When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:</p> <ol style="list-style-type: none"> (1) The chairperson of the board shall perform the functions required in 36.602-3. (2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision. 	<p>When authorized by the agency, either or both of the short processes described in this subsection may be used to select firms for contracts not expected to exceed the small purchase limitation. Otherwise, the procedures prescribed in 36.602-3 and 36.602-4 shall be followed.</p> <p>(a) <i>Selection by the board.</i> The board shall review and evaluate architect-engineer firms in accordance with 36.602-3, except that the selection report shall serve as the final selection list and shall be provided directly to the contracting officer. The report shall serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.</p> <p>(b) <i>Selection by the chairperson of the board.</i> When the board decides that formal action by the board is not necessary in connection with a particular selection, the following procedures shall be followed:</p> <ol style="list-style-type: none"> (1) The chairperson of the board shall perform the functions required in 36.602-3. (2) The agency head or designated selection authority shall review the report and approve it or return it to the chairperson for appropriate revision.

(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.	(3) Upon receipt of an approved report, the chairperson of the board shall furnish the contracting officer a copy of the report which will serve as an authorization for the contracting officer to commence negotiations in accordance with 36.606.
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36.701 Standard and optional forms for use in contracting for construction, dismantling, demolition, or removal of improvements.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting officers shall use Standard Form 1417, Pre-solicitation Notice (Construction Contract), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be \$100,000 or more. This form may also be used if the proposed contract is estimated to be less than \$100,000.</p> <p>(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the simplified acquisition threshold, and may be used for contracts at or below the simplified acquisition threshold. In all sealed bid solicitations, or when the Government otherwise requires a noncancelable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.</p> <p>(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are at or below the simplified acquisition threshold; <i>provided</i>, that the contracting officer includes the clauses required (see Subpart 36.5) in the small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures).</p> <p>(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.</p> <p>(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of construction contractors as required in 36.201.</p>	<p>(a) Contracting officers shall use Standard Form 1417, Pre-solicitation Notice (Construction Contract), to inform prospective offerors that a solicitation will be released for a proposed construction or dismantling, demolition, or removal of improvements contract estimated to be \$100,000 or more. This form may also be used if the proposed contract is estimated to be less than \$100,000.</p> <p>(b) Standard Form 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used to solicit and submit offers, and award construction or dismantling, demolition, or removal of improvements contracts expected to exceed the small purchase limitations, and may be used for contracts within the small purchase limitations. In all sealed bid solicitations, or when the Government otherwise requires a noncancelable offer acceptance period, the contracting officer shall insert in the blank provided in Block 13D the number of calendar days that the offer must be available for acceptance after the date offers are due.</p> <p>(c) Optional Form 347, Order for Supplies or Services, may be used for construction or dismantling, demolition, or removal of improvements contracts that are within the small purchase limitations; <i>provided</i>, that the contracting officer includes the clauses required (see Subpart 36.5) in the small purchases documents (see Part 13, Small Purchases and Other Simplified Purchase Procedures).</p> <p>(d) Contracting officers may use Optional Form 1419, Abstract of Offers—Construction, and Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet, or the automated equivalent, to record offers submitted in response to a sealed bid solicitation (see 14.403) and may also use it to record offers submitted in response to negotiated solicitations.</p> <p>(e) Contracting activities shall use Standard Form 1420, Performance Evaluation (Construction), in evaluating and reporting on the performance of</p>

	construction contractors as required in 36.201.
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36.702 Forms for use in contracting for architect-engineer services.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracting offices shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.</p> <p>(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:</p> <p>(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.</p> <p>(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed the simplified acquisition threshold. This form may be used when the contract amount is expected to be at or below the simplified acquisition threshold, if the contracting officer determines that its use is appropriate.</p> <p>(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.</p>	<p>(a) Contracting offices shall use Standard Form 252, Architect-Engineer Contract, to award fixed-price contracts for architect-engineer services when the services are to be performed in the United States, its possessions, or Puerto Rico.</p> <p>(b) The following standard forms shall be used preliminary to award of a contract for architect-engineer services relating to the construction, alteration, or repair of real property:</p> <p>(1) Standard Form 254, Architect-Engineer and Related Services Questionnaire, shall be used to obtain information from architect-engineer firms regarding their professional qualifications.</p> <p>(2) Standard Form 255, Architect-Engineer and Related Services Questionnaire for Specific Project, shall be used to supplement the SF 254 with additional, specific information on the firms' qualifications for a particular project when the contract amount is expected to exceed the small purchase limitation. This form may be used when the contract amount is expected to be within the small purchase limitations, if the contracting officer determines that its use is appropriate.</p> <p>(c) Standard Form 1421, Performance Evaluation (Architect-Engineer), shall be used in evaluating and reporting on the performance of architect-engineer contractors as required in 36.604.</p>

PART 41—ACQUISITION OF UTILITY SERVICES

41.201 Policy.

<i>Interim</i>	<i>Prior</i>
<p>(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.</p> <p>(b) Except for acquisitions at or below the simplified acquisition threshold in Part 13, agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are fixed or adjusted by a regulatory</p>	<p>(a) Subject to paragraph (d) of this section, it is the policy of the Federal Government that agencies obtain required utility services from sources of supply which are most advantageous to the Government in terms of economy, efficiency, reliability, or service.</p> <p>(b) Except for acquisitions below the small purchase limitation (see 13.000), agencies shall acquire utility services by a bilateral written contract, which must include the clauses required by 41.501, regardless of whether rates or terms and conditions of service are</p>

body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal En-

fixed or adjusted by a regulatory body. Agencies may not use the utility supplier's forms and clauses to avoid the inclusion of provisions and clauses required by 41.501 or by statute. (See 41.202(c) for procedures to be used when the supplier refuses to execute a written contract.)

(c) Specific operating and management details, such as procedures for internal agency contract assistance and review, delegations of authority, and approval thresholds, may be prescribed by an individual agency subject to compliance with applicable statutes and regulations.

(d)(1) Section 8093 of the Department of Defense Appropriations Act of 1988, Pub. L. 100-202, provides that none of the funds appropriated by that Act or any other Act with respect to any fiscal year by any department, agency, or instrumentality of the United States, may be used for the purchase of electricity by the Government in any manner that is inconsistent with state law governing the providing of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements.

(2) The Act does not preclude—

(i) The head of a Federal agency from entering into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration);

(ii) The Secretary of a military department from entering into a contract pursuant to 10 U.S.C. 2394 (which pertains to contracts for energy or fuel for military installations including the provision and operation of energy production facilities); or

(iii) The Secretary of a military department from purchasing electricity from any provider when the utility or utilities having applicable state-approved franchise or other service authorizations are found by the Secretary to be unwilling or unable to meet unusual standards for service reliability that are necessary for purposes of national defense.

(3) Additionally, the head of a Federal agency may—

(i) Consistent with applicable state law, enter into contracts for the purchase or transfer of electricity to the agency by a non-utility, including a qualifying facility under the Public Utility Regulatory Policies Act of 1978;

(ii) Enter into an interagency agreement, pursuant to 41.206 and 17.5, with a Federal power marketing agency or the Tennessee Valley Authority for the transfer of electric power to the agency; and

<p>ergy Regulatory Commission.</p> <p>(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g. consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.</p>	<p>(iii) Enter into a contract with an electric utility under the authority or tariffs of the Federal Energy Regulatory Commission.</p> <p>(e) Prior to acquiring electric utility services on a competitive basis, the contracting officer shall determine, with the advice of legal counsel, by a market survey or any other appropriate means, e.g. consultation with the state agency responsible for regulating public utilities, that such competition would not be inconsistent with state law governing the provision of electric utility service, including state utility commission rulings and electric utility franchises or service territories established pursuant to state statute, state regulation, or state-approved territorial agreements. Proposals from alternative electric suppliers must provide a representation that service can be provided in a manner not inconsistent with section 8093 of Public Law 100-202 (see 41.201(d)). The representation must be supported with appropriate legal and factual rationale.</p>
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41.401 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>Agencies shall review utility service invoices on a monthly basis and all utility accounts, with annual values exceeding the simplified acquisition threshold, on an annual basis. Annual reviews of accounts with annual values beneath the simplified acquisition threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.</p>	<p>Agencies shall review utility service invoices on a monthly basis and all utility accounts, with annual values exceeding the small-purchase threshold, on an annual basis. Annual reviews of accounts with annual values beneath the small-purchase-dollar threshold shall be conducted when deemed advantageous to the Government. The purpose of the monthly review is to ensure the accuracy of utility service invoices. The purpose of the annual review is to ensure that the utility supplier is furnishing the services to each facility under the utility's most economical, applicable rate and to examine competitive markets for more advantageous service offerings. The annual review shall be based upon the facility's usage, conditions and characteristics of service at each individual delivery point for the most recent 12 months. If a more advantageous rate is appropriate, the Federal agency shall request the supplier to make such rate change immediately.</p>

PART 42—CONTRACT ADMINISTRATION

42.903 [Amended]

<i>Interim</i>	<i>Prior</i>
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The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the simplified acquisition threshold in FAR 13.000.	The contracting officer shall insert the clause at 52.242-13, Bankruptcy, in all solicitations and contracts exceeding the small purchase limitation in FAR 13.000.
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42.1104 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:</p> <ul style="list-style-type: none"> (i) Contract requirements for reporting production progress and performance. (ii) The contract performance schedule. (iii) The contractor's production plan. (iv) The contractor's history of contract performance. (v) The contractor's experience with the contract supplies or services. (vi) The contractor's financial capability. (vii) Any supplementary written instructions from the contracting office. <p>(b) Contracts at or below the simplified acquisition threshold should not normally require production surveillance.</p> <p>(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.</p> <p>(d) In performing surveillance, contract administration office personnel shall avoid any action that may (1) be inconsistent with any contract requirement or (2) result in claims of waivers, of changes, or of other contract modifications.</p>	<p>(a) The contract administration office determines the extent of production surveillance on the basis of (1) the criticality (degree of importance to the Government) assigned by the contracting officer (see 42.1105) to the supplies or services and (2) consideration of the following factors:</p> <ul style="list-style-type: none"> (i) Contract requirements for reporting production progress and performance. (ii) The contract performance schedule. (iii) The contractor's production plan. (iv) The contractor's history of contract performance. (v) The contractor's experience with the contract supplies or services. (vi) The contractor's financial capability. (vii) Any supplementary written instructions from the contracting office. <p>(b) Contracts of values less than the small purchase threshold should not normally require production surveillance.</p> <p>(c) In planning and conducting surveillance, contract administration offices shall make maximum use of any reliable contractor production control or data management systems.</p> <p>(d) In performing surveillance, contract administration office personnel shall avoid any action that may (1) be inconsistent with any contract requirement or (2) result in claims of waivers, of changes, or of other contract modifications.</p>

PART 43—CONTRACT MODIFICATIONS

43.205 [Amended]

<i>Interim</i>	<i>Prior</i>
(a)(1) The contracting officer shall insert the clause at	(a)(1) The contracting officer shall insert the clause at

52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for (1) dismantling, demolition, or removal of improvements; and (2) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the **simplified acquisition threshold** in Part 13.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicita-

52.243-1, Changes—Fixed-Price, in solicitations and contracts when a fixed-price contract for supplies is contemplated.

(2) If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services (other than architect-engineer services, transportation, or research and development) and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for architect-engineer or other professional services, the contracting officer shall use the clause with its Alternate III.

(5) If the requirement is for transportation services, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(b)(1) The contracting officer shall insert the clause at 52.243-2, Changes—Cost-Reimbursement, in solicitations and contracts when a cost-reimbursement contract for supplies is contemplated.

(2) If the requirement is for services and no supplies are to be furnished, the contracting officer shall use the clause with its Alternate I.

(3) If the requirement is for services and supplies are to be furnished, the contracting officer shall use the clause with its Alternate II.

(4) If the requirement is for construction, the contracting officer shall use the clause with its Alternate III.

(5) If a facilities contract is contemplated, the contracting officer shall use the clause with its Alternate IV.

(6) If it is desired to include the clause in solicitations and contracts when a research and development contract is contemplated, the contracting officer shall use the clause with its Alternate V.

(c) The contracting officer shall insert the clause at 52.243-3, Changes—Time-and-Materials or Labor-Hours, in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.

(d) The contracting officer shall insert the clause at 52.243-4, Changes, in solicitations and contracts for (1) dismantling, demolition, or removal of improvements; and (2) construction, when a fixed-price contract is contemplated and the contract amount is expected to exceed the ~~applicable small purchase limitation~~ in Part 13.

(e) The contracting officer shall insert the clause at 52.243-5, Changes and Changed Conditions, in solicita-

tions and contracts for construction, when the contract amount is not expected to exceed the **simplified acquisition threshold** in Part 13.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

tions and contracts for construction, when the contract amount is not expected to exceed the ~~applicable small purchase limitation~~ in Part 13.

(f) The contracting officer may insert a clause, substantially the same as the clause at 52.243-6, Change Order Accounting, in solicitations and contracts for supply and research and development contracts of significant technical complexity, if numerous changes are anticipated. The clause may be included in solicitations and contracts for construction if deemed appropriate by the contracting officer.

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.201-2 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes</p> <p>(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either \$25,000 or 5 percent of the total estimated cost of the prime contract; except that for DoD, Coast Guard, and NASA, the amount shall be the greater of the simplified acquisition threshold in Part 13 or 5 percent of the total estimated cost of the prime contract.</p> <p>(c) If the contractor has an approved purchasing system— [entire (c) revised by FAC 90-23; (d) deleted].</p> <p>(1) Consent is not required for the subcontracts identified in paragraph (b) of this subsection (but see subparagraph (c)(2) of this subsection). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and</p> <p>(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines on a prime</p>	<p>(a) Consent is required under cost-reimbursement and letter prime contracts (except facilities contracts) for subcontracts (1) for fabrication, purchase, rental, installation, or other acquisition of special test equipment valued at more than \$10,000 or of any items of facilities, or (2) that have experimental, developmental, or research work as one of their purposes</p> <p>(b) If the contractor does not have an approved purchasing system, consent is also required, under cost-reimbursement and letter prime contracts for (1) cost-reimbursement, time-and-materials, or labor-hour subcontracts and (2) fixed-price subcontracts that exceed either \$25,000 or 5 percent of the total estimated cost of the prime contract; except that for DoD, Coast Guard, and NASA, the amount shall be the greater of the small purchase limitation in Part 13 or 5 percent of the total estimated cost of the prime contract.</p> <p>(c) If the contractor has an approved purchasing system— [entire (c) revised by FAC 90-23; (d) deleted].</p> <p>(1) Consent is not required for the subcontracts identified in paragraph (b) of this subsection (but see subparagraph (c)(2) of this subsection). However, advance notification is still required by 10 U.S.C. 2306(e) or 41 U.S.C. 254(b); and</p> <p>(2) Consent is required for subcontracts identified in the subcontracts clause of the contract. These can be subcontracts for critical systems, subsystems, or components, or other subcontracts selected by the contracting officer as needing special surveillance. Subcontracts may be identified by subcontract number or by class of items (e.g., subcontracts for engines</p>

contract for airframes)	on a prime contract for airframes)
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44.204 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) <i>Fixed-price contracts.</i> (1) Except as specified in (a)(2) below, the contracting officer—</p> <p>(i) Shall insert the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed \$500,000; and</p> <p>(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed \$500,000, if the contracting officer determines that its use will be in the Government's interest.</p> <p>(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.</p> <p>(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I. [FAC 90-23]</p> <p>(b) <i>Cost-reimbursement and letter contracts.</i> The contracting officer shall insert the clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. See also 44.205.</p> <p>(c) <i>Time-and-materials and labor-hour contracts.</i> The contracting officer shall insert the clause at 52.244-3, Subcontracts (Time-and-Materials and Labor-Hour Contracts), in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.</p> <p>(d) <i>Architect-engineer contracts.</i> The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.</p> <p>(e) <i>Competition in subcontracting.</i> The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in</p>	<p>(a) <i>Fixed-price contracts.</i> (1) Except as specified in (a)(2) below, the contracting officer—</p> <p>(i) Shall insert the clause at 52.244-1, Subcontracts (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is expected to exceed \$500,000; and</p> <p>(ii) May insert the clause in solicitations and contracts when a fixed-price contract is contemplated and the contract amount is not expected to exceed \$500,000, if the contracting officer determines that its use will be in the Government's interest.</p> <p>(2) The clause shall not be used (i) in solicitations and contracts for mortuary services, refuse services, or shipment and storage of personal property, when an agency prescribed clause on approval of subcontractors' facilities is required, or (ii) in architect-engineer contracts.</p> <p>(3) If the contracting officer elects to delete the requirement for advance notification of, or consent to, any subcontracts that were evaluated during negotiations, the contracting officer shall use the clause with its Alternate I. [FAC 90-23]</p> <p>(b) <i>Cost-reimbursement and letter contracts.</i> The contracting officer shall insert the clause at 52.244-2, Subcontracts (Cost-Reimbursement and Letter Contracts), in solicitations and contracts when a cost-reimbursement or letter contract is contemplated. If the contracting office is in DoD, the Coast Guard, or NASA, the contracting officer shall use the clause with its Alternate I. See also 44.205.</p> <p>(c) <i>Time-and-materials and labor-hour contracts.</i> The contracting officer shall insert the clause at 52.244-3, Subcontracts (Time-and-Materials and Labor-Hour Contracts), in solicitations and contracts when a time-and-materials or labor-hour contract is contemplated.</p> <p>(d) <i>Architect-engineer contracts.</i> The contracting officer shall insert the clause at 52.244-4, Subcontractors and Outside Associates and Consultants, in fixed-price architect-engineer contracts.</p> <p>(e) <i>Competition in subcontracting.</i> The contracting officer shall, when contracting by negotiation, insert the clause at 52.244-5, Competition in Subcontracting, in</p>

<p>solicitations and contracts when the contract amount is expected to exceed the simplified acquisition threshold in Part 13, unless—</p> <p>(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or</p> <p>(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) above is contemplated.</p> <p>[44.205 deleted by FAC 90-23]</p>	<p>solicitations and contracts when the contract amount is expected to exceed the small-purchase limitation in Part 13, unless—</p> <p>(1) A firm-fixed-price contract, awarded on the basis of adequate price competition or whose prices are set by law or regulation, is contemplated; or</p> <p>(2) A contract of the type and/or purpose identified in paragraphs (c) and (d) above is contemplated.</p> <p>[44.205 deleted by FAC 90-23]</p>
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PART 45—GOVERNMENT PROPERTY

45.106 Government property clauses.

<i>Interim</i>	<i>Prior</i>
<p>This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.</p> <p>(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.</p> <p>(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.</p> <p>(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.</p> <p>(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.</p> <p>(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish</p>	<p>This section prescribes the principal Government property clauses. Other clauses pertaining to Government property are prescribed in Subpart 45.3.</p> <p>(a) The contracting officer shall insert the clause at 52.245-1, Property Records, in solicitations and contracts when the conditions in 45.105(b) exist and the Government maintains the Government's official Government property records.</p> <p>(b)(1) The contracting officer shall insert the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price contract is contemplated, except as provided in paragraphs (d) and (e) below.</p> <p>(2) If the contract is (i) a negotiated fixed-price contract for which prices are not based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public, or prices set by law or regulation, or (ii) a fixed-price service contract which is performed primarily on a Government installation, provided the contracting officer determines it to be in the best interest of the Government (see subpart 45.103(b)(4)), the contracting officer shall use the clause with its Alternate I.</p> <p>(3) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate II.</p> <p>(c) The contracting officer shall insert the clause at 52.245-3, Identification of Government-Furnished Property, in addition to the clause at 52.245-2, Government Property (Fixed-Price Contracts), in solicitations and contracts when a fixed-price construction contract is contemplated under which the Government is to furnish</p>

<p>Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.</p> <p>(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.</p> <p>(e) When the cost of the item to be repaired does not exceed the simplified acquisition threshold (but see 13.103(b)), purchase orders for property repair need not include a Government property clause.</p> <p>(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.</p> <p>(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.</p> <p>(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clauses prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.</p>	<p>Government property f.o.b. railroad cars at a specified destination or f.o.b. truck at the project site. The contract Schedule shall specify the point of delivery and may include special terms and conditions covering installation, preparation for operation, or equipment testing by the Government or by another contractor.</p> <p>(d) The contracting officer may insert the clause at 52.245-4, Government-Furnished Property (Short Form), in solicitations and contracts when a fixed-price, time-and-material, or labor-hour contract is contemplated and the acquisition cost of all Government-furnished property to be involved in the contract is \$100,000 or less; unless a contract with an educational or nonprofit organization is contemplated.</p> <p>(e) When the cost of the item to be repaired does not exceed the small purchase limitation in section 13.000, purchase orders for property repair need not include a Government property clause.</p> <p>(f)(1) The contracting officer shall insert the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts), in solicitations and contracts when a cost-reimbursement, time-and-material, or labor-hour contract is contemplated, except as provided in paragraph (d) above.</p> <p>(2) If the contract is for the conduct of basic or applied research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research (see 35.014), the contracting officer shall use the clause with its Alternate I.</p> <p>(g) The contracting officer shall insert the clause at 52.245-6, Liability for Government Property (Demolition Services Contracts), in addition to the clause prescribed at 37.304, in solicitations and contracts for dismantling, demolition, or removal of improvements.</p>
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PART 46—QUALITY ASSURANCE

46.202-1 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) Except as specified in (b) below, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired at or below the simplified acquisition threshold conform to contract quality requirements before they are tendered to the Government (see 46.301).</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in advance of their tender for acceptance, or to pass</p>	<p>(a) Except as specified in (b) below, the Government shall rely on the contractor to accomplish all inspection and testing needed to ensure that supplies or services acquired under small purchases conform to contract quality requirements before they are tendered to the Government (see 46.301).</p> <p>(b) The Government shall not rely on inspection by the contractor if the contracting officer determines that the Government has a need to test the supplies or services in</p>

<p>judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <ul style="list-style-type: none"> (1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1); (2) The potential losses in the event of defects; (3) The likelihood of uncontested replacement or correction of defective work; and (4) The cost of detailed Government inspection. 	<p>advance of their tender for acceptance, or to pass judgment upon the adequacy of the contractor's internal work processes. In making the determination, the contracting officer shall consider—</p> <ul style="list-style-type: none"> (1) The nature of the supplies and services being purchased and their intended use (see 46.204 and Table 46-1); (2) The potential losses in the event of defects; (3) The likelihood of uncontested replacement or correction of defective work; and (4) The cost of detailed Government inspection.
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46.301 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be at or below the simplified acquisition threshold and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).</p>	<p>The contracting officer shall insert the clause at 52.246-1, Contractor Inspection Requirements, in solicitations and contracts for supplies or services when the contract amount is expected to be within the small purchase limitation and (a) inclusion of the clause is necessary to ensure an explicit understanding of the contractor's inspection responsibilities, or (b) inclusion of the clause is required under agency procedures. The clause shall not be used if the contracting officer has made the determination specified in 46.202-1(b).</p>

46.302 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate</p>	<p>The contracting officer shall insert the clause at 52.246-2, Inspection of Supplies—Fixed-Price, in solicitations and contracts for supplies, or services that involve the furnishing of supplies, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation and inclusion of the clause is in the Government's interest. If a fixed-price incentive contract is contemplated, the contracting officer shall use the clause with its Alternate I. If a fixed-ceiling-price contract with retroactive price redetermination is contemplated, the contracting officer shall use the clause with its Alternate II.</p>

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46.304 [Amended]

<i>Interim</i>	<i>Prior</i>
The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold . The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold and inclusion is in the Government's interest.	The contracting officer shall insert the clause at 52.246-4, Inspection of Services—Fixed-Price, in solicitations and contracts for services, or supplies that involve the furnishing of services, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small-purchase limitation . The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small-purchase limitation and inclusion is in the Government's interest.

46.307 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development — Fixed-Price, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a fixed-price contract is contemplated, and (3) the contract amount is expected to exceed the simplified acquisition threshold; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.</p> <p>(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.</p>	<p>(a) The contracting officer shall insert the clause at 52.246-7, Inspection of Research and Development — Fixed-Price, in solicitations and contracts for research and development when (1) the primary objective of the contract is the delivery of end items other than designs, drawings, or reports, (2) a fixed-price contract is contemplated, and (3) the contract amount is expected to exceed the small purchase limitation; unless use of the clause is impractical and the clause prescribed in 46.309 is considered to be more appropriate.</p> <p>(b) The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and its use is in the Government's interest.</p>

46.312 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold, and its use is in the Government's interest.</p>	<p>The contracting officer shall insert the clause at 52.246-12, Inspection of Construction, in solicitations and contracts for construction when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is expected to be within the small purchase limitation, and its use is in the Government's interest.</p>

46.316 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold and inclusion of the clause is authorized under agency procedures.</p>	<p>The contracting officer shall insert the clause at 52.246-16, Responsibility for Supplies, in solicitations and contracts for (a) supplies, (b) services involving the furnishing of supplies, or (c) research and development, when a fixed-price contract is contemplated and the contract amount is expected to exceed the small purchase limitation. The contracting officer may insert the clause in such solicitations and contracts when the contract amount is not expected to exceed the small purchase limitation and inclusion of the clause is authorized under agency procedures.</p>

46.404 Government contract quality assurance for acquisitions at or below the simplified acquisition threshold.

46.404 Government contract quality assurance of small purchases.

<i>Interim</i>	<i>Prior</i>
<p>(a) In determining the type and extent of Government contract quality assurance to be required for contracts at or below the simplified acquisition threshold, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-1).</p> <p>(b) When the conditions in 46.202-1(b) apply, the following policies shall govern:</p> <p>(1) Unless a special situation exists, the Government shall inspect contracts at or below the simplified acquisition threshold at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.</p> <p>(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.</p> <p>(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.</p>	<p>(a) In determining the type and extent of Government contract quality assurance to be required for small purchases, the contracting officer shall consider the criticality of application of the supplies or services, the amount of possible losses, and the likelihood of uncontested replacement of defective work (see 46.202-1).</p> <p>(b) When the conditions in 46.202-1(b) apply, the following policies shall govern:</p> <p>(1) Unless a special situation exists, the Government shall inspect small purchases at destination and only for type and kind; quantity; damage; operability (if readily determinable); and preservation, packaging, packing, and marking, if applicable.</p> <p>(2) Special situations may require more detailed quality assurance and the use of a standard inspection or higher-level contract quality requirement. These situations include those listed in 46.402 and contracts for items having critical applications. See Table 46-1 at 46.204 for other possible situations.</p> <p>(3) Detailed Government inspection may be limited to those characteristics that are special or likely to cause harm to personnel or property. When repetitive purchases of the same item are made from the same manufacturer with a history of defect-free work, Government inspection may be reduced to a periodic check of occasional purchases.</p>

46.805 Contract clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) Contracts that exceed the simplified acquisition threshold. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the simplified acquisition threshold and the contract is subject to the requirements of this subpart as indicated in 46.801:</p> <p>(1) In contracts requiring delivery of end items that</p>	<p>(a) Contracts that exceed the small purchase limitation in 13.000. The contracting officer shall insert the appropriate clause or combination of clauses specified in subparagraphs (a)(1) through (a)(5) of this section in solicitations and contracts when the contract amount is expected to be in excess of the small purchase limitation in 13.000 and the contract is subject to the requirements of this subpart as indicated in 46.801:</p> <p>(1) In contracts requiring delivery of end items that</p>

<p>are not high-value items, insert the clause at 52.246-23, Limitation of Liability.</p> <p>(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.</p> <p>(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.</p> <p>(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.</p> <p>(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.</p> <p>(b) Acquisitions at or below the simplified acquisition threshold in Part 13. The clauses prescribed by paragraph (a) of this section are not required for contracts at or below the simplified acquisition threshold in Part 13. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (a)(1) or (a)(4) of this section in a contract at or below the simplified acquisition threshold in Part 13 and may obtain any price reduction that is appropriate.</p>	<p>are not high-value items, insert the clause at 52.246-23, Limitation of Liability.</p> <p>(2) In contracts requiring delivery of high-value items, insert the clause at 52.246-24, Limitation of Liability—High Value Items.</p> <p>(3) In contracts requiring delivery of both high-value items and other end items, insert both clauses prescribed in (1) and (2) above, Alternate I of the clause at 52.246-24, and identify clearly in the contract schedule the line items designated as high-value items.</p> <p>(4) In contracts requiring the performance of services, insert the clause at 52.246-25, Limitation of Liability—Services.</p> <p>(5) In contracts requiring both the performance of services and the delivery of end items, insert the clause prescribed in subparagraph (4) above and the appropriate clause or clauses prescribed in subparagraph (1), (2), or (3) above, and identify clearly in the contract schedule any high-value line items.</p> <p>(b) Contracts within the small purchase limitation in 13.000. The clauses prescribed by paragraph (a) of this section are not required for contracts within the small purchase limitation in 13.000. However, in response to a contractor's specific request, the contracting officer may insert the clauses prescribed in subparagraph (a)(1) or (a)(4) of this section in a contract within the small purchase limitation in 13.000 and obtain any price reduction that is appropriate.</p>
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PART 47—TRANSPORTATION

47.104-4 Contract clauses.

<i>Interim</i>	<i>Prior</i>
<p>(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—</p> <p>(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or</p> <p>(2) Fixed-price f.o.b. origin contracts (other than contracts at or below the simplified acquisition threshold in Part 13) (see 47.104-2(b) and 47.104-3).</p> <p>(b) The contracting officer may insert the clause at</p>	<p>(a) The contracting officer, in order to ensure the application of section 10721 rates, shall insert the clause at 52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts when the contracts will be—</p> <p>(1) Cost-reimbursement contracts, including those that may involve the movement of household goods (see 47.104-3(b)); or</p> <p>(2) Fixed-price f.o.b. origin contracts (other than small purchases under Part 13) (see 47.104-2(b) and 47.104-3).</p> <p>(b) The contracting officer may insert the clause at</p>

<p>52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts made at or below the simplified acquisition threshold in 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.</p> <p>(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract. [FAC 90-23]</p>	<p>52.247-1, Commercial Bill of Lading Notations, in solicitations and contracts awarded within the small purchase limitations in 13.000 when it is contemplated that the delivery terms will be f.o.b. origin.</p> <p>(c) The contracting officer shall insert the clause at 52.247-67, Submission of Commercial Transportation Bills to the General Services Administration for Audit, in solicitations and contracts when a cost-reimbursement contract is contemplated and the contract or a first-tier cost-reimbursement subcontract thereunder will authorize reimbursement of transportation as a direct charge to the contract or subcontract. [FAC 90-23]</p>
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47.200 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—</p> <p>(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and</p> <p>(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.</p> <p>(b) Except as provided in paragraph (c) below, this subpart does not apply to—</p> <p>(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);</p> <p>(2) Freight transportation acquired by bills of lading;</p> <p>(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or</p> <p>(4) Contracts at or below the simplified acquisition threshold in Part 13.</p> <p>(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.</p> <p>(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—</p> <p>(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);</p> <p>(2) By U.S. Government bill of lading (GBL); or</p> <p>(3) By DoD under the Personal Property Manage-</p>	<p>(a) This subpart prescribes procedures for the acquisition by sealed bid or negotiated contracts of—</p> <p>(1) Freight transportation (including local drayage) from rail, motor (including bus), domestic water (including inland, coastwise, and intercoastal) carriers, and from freight forwarders; and</p> <p>(2) Transportation-related services including but not limited to stevedoring, storage, packing, marking, and ocean freight forwarding.</p> <p>(b) Except as provided in paragraph (c) below, this subpart does not apply to—</p> <p>(1) The acquisition of freight transportation from (i) domestic or international air carriers and (ii) international ocean carriers (see Subparts 47.4 and 47.5);</p> <p>(2) Freight transportation acquired by bills of lading;</p> <p>(3) Freight transportation for which rates are negotiated under 49 U.S.C. 10721(b)(1); or</p> <p>(4) Small purchases under Part 13.</p> <p>(c) With appropriate modifications, the procedures in this subpart may be applied to the acquisition of freight transportation from the carriers listed in subparagraph (b)(1) above and passenger transportation from any carrier or mode.</p> <p>(d) The procedures in this subpart are applicable to the transportation of household goods and personal effects of persons being relocated at Government expense except when acquired—</p> <p>(1) Under the commuted rate schedules as required in the Federal Travel Regulation (41 CFR 101-7);</p> <p>(2) By U.S. Government bill of lading (GBL); or</p> <p>(3) By DoD under the Personal Property Manage-</p>

ment Regulation (DoD 4500.34R). (e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.	ment Regulation (DoD 4500.34R). (e) Additional guidance for DOD acquisition of freight and passenger transportation is in the Defense Traffic Management Regulation.
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47.205 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).</p> <p>(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the threshold for use of simplified acquisition procedures in Part 13, if term contracts or basic ordering agreements are not available</p>	<p>(a) All Government agencies may contract for transportation or for transportation-related services and execute basic ordering agreements (BOA's) (see Subpart 16.7) unless agency regulations prescribe otherwise. However, it is generally more economical and efficient for most agencies to make use of term contracts and basic ordering agreements that have been executed by agencies that employ personnel experienced in contracting for transportation or for transportation-related services. The Department of Defense (DOD) and the General Services Administration (GSA) contract for transportation or for transportation-related services on behalf of other activities and agencies. For instance, GSA awards term contracts for services such as local drayage, office moves, and ocean-freight forwarding (see 47.105 for assistance).</p> <p>(b) Agencies may obtain transportation or transportation-related services for which the cost does not exceed the small-purchase limitation under the small-purchase procedures in Part 13, if term contracts or basic ordering agreements are not available</p>

47.305-16 [Amended]

<i>Interim</i>	<i>Prior</i>
<p>(a) <i>Required shipping weights.</i> The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.</p> <p>(b) <i>Guaranteed shipping characteristics.</i> (1) The contracting officer shall insert in solicitations and contracts, excluding those at or below the simplified acquisition threshold of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the</p>	<p>(a) <i>Required shipping weights.</i> The contracting officer shall insert in solicitations and contracts the clause at 52.247-59, F.o.b. Origin—Carload and Truckload Shipments, when it is contemplated that they may result in f.o.b. origin contracts with shipments in carloads or truckloads. This will facilitate realistic freight cost evaluations of offers and ensure that contractors produce economical shipments of agreed size.</p> <p>(b) <i>Guaranteed shipping characteristics.</i> (1) The contracting officer shall insert in solicitations and contracts, excluding those awarded under the small-purchase procedures of Part 13, the clause at 52.247-60, Guaranteed Shipping Characteristics, when shipping and other characteristics are required to evaluate offers as to transportation costs. When all of the shipping characteristics</p>

<p>shipping characteristics listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.</p> <p>(2) The award document shall show the shipping characteristics used in the evaluation.</p> <p>(c) <i>Minimum size of shipments.</i> When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.</p> <p>(d) <i>Specific quantities unknown.</i> (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery “f.o.b. origin” and/or “f.o.b. destination” and that offers will be evaluated on both bases.</p> <p>(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.</p>	<p>listed in paragraph (a) of the clause at 52.247-60 are not required to evaluate offers as to transportation costs, the contracting officer shall delete the characteristics not required from the clause.</p> <p>(2) The award document shall show the shipping characteristics used in the evaluation.</p> <p>(c) <i>Minimum size of shipments.</i> When volume rates may apply, the contracting officer shall insert in solicitations and contracts the clause at 52.247-61, F.o.b. Origin—Minimum Size of Shipments.</p> <p>(d) <i>Specific quantities unknown.</i> (1) When total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined, solicitations shall state that offers are to be submitted on the basis of delivery “f.o.b. origin” and/or “f.o.b. destination” and that offers will be evaluated on both bases.</p> <p>(2) The contracting officer shall insert in solicitations and contracts the clause at 52.247-62, Specific Quantities Unknown, when total requirements and destinations to which shipments will be made are known, but the specific quantity to be shipped to each destination cannot be predetermined. This clause protects the interests of both the Government and the contractor during the course of the performance of the contract.</p>
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47.405 Contract clause.

<i>Interim</i>	<i>Prior</i>
<p>The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to contracts awarded using the simplified acquisition procedures in Part 13.</p>	<p>The contracting officer shall insert the clause at 52.247-63, Preference for U.S.-Flag Air Carriers, in solicitations and contracts whenever it is possible that U.S. Government-financed international air transportation of personnel (and their personal effects) or property will occur in the performance of the contract. This clause does not apply to small purchases made under Part 13.</p>

47.504 Exceptions.

<i>Interim</i>	<i>Prior</i>
<p>The policy and procedures in this subpart do not apply to the following:</p>	<p>The policy and procedures in this subpart do not apply to the following:</p>

<p>(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.</p> <p>(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).</p> <p>(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.</p> <p>(d) Contracts awarded using the simplified procedures in Part 13.</p>	<p>(a) Shipments aboard vessels of the Panama Canal Commission or as required or authorized by law or treaty.</p> <p>(b) Ocean transportation between foreign countries of supplies purchased with foreign currencies made available, or derived from funds that are made available, under the Foreign Assistance Act of 1961 (22 U.S.C. 2353).</p> <p>(c) Shipments of classified supplies when the classification prohibits the use of non-Government vessels.</p> <p>(d) Small purchases under Part 13.</p>
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